

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7430 of 1989

TO

SPECIAL CIVIL APPLICATION No 7434 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ELECON ENGINEERING CO LTD

Versus

K J ISSAC

Appearance:

(In all Special Civil Applications)

MR KM PATEL for Petitioner

MR YATIN SONI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/10/97

ORAL JUDGEMENT

#. All these Special Civil Applications arise out of the final award dated 9th May 1989, made in Arbitration Reference under section 10A of the Industrial Disputes

Act, 1947 (hereinafter referred to as 'Act 1947').

#. The respondents-workmen in these petitions were discharged from services by petitioner on 18.6.84 in case of three workmen and on 25.6.84 and 2.7.84 in case of two other workmen. Under the impugned award aforesaid the discharge order of all the respondents-workmen in these petitions was held to be not proper and justified and they were ordered to be reinstated back in services. So far as the backwages are concerned, the Arbitrator, in case of respondents-workmen in Special Civil Applications No.7430 of 1989, 7432 of 1989, and 7433 of 1989, ordered for full backwages and in the remaining two Special Civil Applications, i.e. Special Civil Application No.7431 of 1989 and 7434 of 1989, 80% backwages were ordered to be paid.

#. During the course of arguments, the learned counsel for petitioner has given up the challenge made to the impugned award to the extent it relates to grant of reinstatement in services to the respondents-workmen in all cases, but restricted the challenge to that part of the award where in three petitions, the respondents-workmen were ordered to be given 100% backwages and in two petitions 80% backwages were ordered to be paid.

#. The parties are not at variance that this Court has not stayed the operation of the award to the extent it relates to reinstatement of respondents-workmen in all the cases. So far as the backwages are concerned, this Court, by way of interim relief, ordered the petitioner to pay 50% of the backwages awarded to the respondents-workmen in these cases by the Arbitrator. The counsel for the parties are also in agreement that in pursuance of the interim order which has been passed in these Special Civil Applications, 50% of the backwages awarded to the respondents-workmen by the Arbitrator has been paid to the respondents-workmen. During the course of arguments, this Court has observed that when the three workmen out of five have already left the services of the petitioner under the voluntary retirement scheme and two are in services since long back, it is in the larger interest of the parties as well as to have industrial peace in the industry and further to have cordial relations in between the employer and employees, that this matter may be amicably settled. The learned counsel for petitioner has therefore agreed to pay 25% of the remaining amount of 50% backwages awarded to the respondents-workmen in these matters. However, the learned counsel for respondents-workmen claimed the full

50% of the awarded backwages as awarded by the Arbitrator. However, both the counsel for the parties, after having instructions from their clients who are present in the Court, made a statement that whatever amount of the backwages this Court decides to be paid by petitioner to the respondents-workmen will be accepted by both the parties. Though it would have been better that the parties themselves would have settled the matter, but when they have left this matter to be decided by the Court, I have to decide this matter keeping in view the interest of both the parties. The marginal dispute between the parties in the settlement which now remains is of 50% backwages out of backwages awarded to the respondents-workmen by the Arbitrator. In the matter of compromise, there is no dispute, that the same is based on the first and foremost principle of "give and take". If both the parties stick to the terms of compromise which are there, then the matter cannot be amicably settled. However, it is also not unknown that both the parties, by giving themselves to the terms of settlement, keep reasonable margin for bargain also. Taking into consideration the aforesaid aspect as well as the fact that both the employer and the employee should have made all efforts to amicably settle their dispute in the larger interest of both the parties as well as industrial peace and further in view of the fact that three of the workmen out of five have already left the services of the petitioner, I consider it to be appropriate that the petitioner may pay 35% of the 50% remaining amount of backwages as awarded by the Arbitrator under the impugned award to the respondents-workmen. Determination of this amount, to be paid to the workmen on the basis of this order has to be made within a period of one month from the date of receipt of copy of this order by the petitioner and the payment thereof shall be made within seven days next.

#. In the result, all these Special Civil Applications and Rule therein stand disposed of in the aforesaid terms and the impugned award of the Arbitrator also stands modified to the aforesaid extent. No order as to costs.

.....

(sunil)